

Message Text

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C O N F I D E N T I A L MADRID 8171

E.O. 11652: GDS

TAGS: PINT, SP

SUBJ: SUCCESSION - GOVERNMENTAL STRUCTURES

REF: A. MADRID 7327

B. MADRID A-201 OF 10/18/75

C. MADRID A-39 OF 2/8/74

D. MADRID A-206 OF 11/5/74

SUMMARY: THE REFS HAVE DISCUSSED AMPLY THE GOVERNMENTAL STRUCTURES AND THEIR OPERATION THROUGH THE SUCCESSION, BUT IT MAY BE USEFUL FOR THE DEPT TO HAVE A SUCCINT PRECIS, WHICH FOLLOWS BELOW.

AS A PRACTICAL MATTER THE REGENCY COUNCIL HAS NO REAL POWER EXCEPT TO INSURE THAT JUAN CARLOS IS SWORN IN AS HEAD OF STATE. JUAN CARLOS, BECAUSE OF LAWS THAT PERMITTED FRANCO (BUT NOT HIS SUCCESSOR) TO UNILATERALLY DECREE CHANGES IN THE PATCHWORK CONSTITUTIONAL STRUCTURE AND BECAUSE OF FRANCO'S ENORMOUS POLITICAL CLOUT, DOES NOT HAVE FRANCO'S POWERS. NONETHELESS AT LEAST INITIALLY, JUAN CARLOS WILL HAVE TO A CONSIDERABLE DEGREE THE CHARACTERISTICS OF A RULING MONARCH, EVEN THOUGH HIS EXPLICIT POWERS ARE THOROUGHLY CIRCUMSCRIBED BY THE COORDINATION AND CLEARANCE PROCEDURES WITH THE PRIME MINISTER, THE COUNCIL OF THE REALM AND CORTES. END SUMMARY

1. WITH FRANCO'S DEATH THE REGENCY COUNCIL ASSUMED THE PREROGATIVES OF THE HEAD OF STATE UNTIL THE SWEARING-IN
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OF JUAN CARLOS. IT IS LED BY THE PRESIDENT OF THE "CORTES",

CURRENTLY SR. RODRIGUEZ DE VALCARCEL, WHO IS SIMULTANEOUSLY PRESIDENT OF THE COUNCIL OF THE REALM. THE OTHER TWO MEMBERS OF THE REGENCY COUNCIL ARE THE RANKING PRELATE, ARCHBISHOP CANTERO QUADRADO, AND THE RANKING LT. GENERAL ON ACTIVE DUTY, SALAS LARRAZABAL. THIS COUNCIL CAN ONLY ACT IN THE NAME OF PRINCE JUAN CARLOS AND AMOUNTS ONLY TO A CARETAKER ARRANGEMENT PENDING THE TAKING OF AN OATH OF OFFICE BY PRINCE JUAN CARLOS AS KING BEFORE THE "CORTES", WHICH MUST BE DONE WITHIN EIGHT DAYS FROM THE DATE OF FRANCO'S DEATH.

2. THE GOVT LED BY PRIME MINISTER ARIAS NAVARRO CONTINUES IN OFFICE AT THIS TIME. UNDER THE BASIC LAWS, ARIAS, WHOSE FIVE-YEAR TERM RUNS UNTIL JANUARY 1979, IS NOT OBLIGATED TO RESIGN WHEN A NEW HEAD OF STATE IS SWORN IN. BUT HE WILL, WE BELIEVE, BE GUIDED BY JUAN CARLOS' WISHES. AT ALL EVENTS, THE MATTER OF A NEW GOVT WILL ALMOST CERTAINLY BE DEFERRED UNTIL AFTER THE FUNERAL.

3. JUAN CARLOS WILL BECOME KING WHEN HE SWEARS AN OATH BEFORE THE "CORTES" NOW 22. WHEN HE ACCEPTED THE FUTURE CROWN IN JULY 1969, JUAN CARLOS SWORE AN OATH OBLIGATING HIMSELF TO UPHOLD THE PRESENT CONSTITUTIONAL SYSTEM (BASIC LAWS) AND THE PRINCIPLES OF THE NATIONAL MOVEMENT. ACCORDING TO THE GENERALLY ACCEPTED INTERPRETATION OF THE BASIC LAWS AND SUBSEQUENT IMPLEMENTING DECREES, HE WILL NOW TAKE A SIMILAR OATH.

4. FRANCO'S LIFETIME ABSOLUTE POWERS BECAME NULL AND VOID WITH HIS DEATH. TWO LAWS ADOPTED IN 1938 AND 1939 EMPOWERED FRANCO TO DICTATE LAWS AND DECREES WHICH COULD BE PROMULGATED EVEN IF NOT PRECEDED BY DISCUSSION IN THE COUNCIL OF MINISTERS. JUAN CARLOS WILL BE BOUND BY ARTICLE 8, PARA II OF THE ORGANIC LAW (1967) WHICH STATES THAT "ALL DECISIONS BY THE HEAD OF STATE MUST BE COUNTER-SIGNED, AS THE CASE MAY BE, BY THE PREMIER OF GOVT, OR THE MINISTER CONCERNED, THE PRESIDENT OF THE "CORTES" OR BY THE PRESIDENT OF THE COUNCIL OF THE REALM, ANY DISPOSITION WHICH DOES NOT COMPLY WITH THIS FORMALITY BEING INVALID." WHEREAS FRANCO MODIFIED THE BASIC LAWS BY DECREE ON TWO

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OCCASIONS, HIS SUCCESSOR WILL REQUIRE THE SUPPORT OF THE "CORTES" AND A POPULAR REFERENDUM TO AMEND THEM. WITH FRANCO GONE, THE INITIATIVE FOR ISSUING DECREE/LAWS RESTS WITH THE PREMIER WHO, AFTER OBTAINING "CORTES" APPROVAL, MAY SUBMIT THEM TO THE HEAD OF STATE FOR HIS SANCTION.

5. JUAN CARLOS HAS THE CONSTITUTIONAL POWERS

CUSTOMARILY ATTRIBUTED TO A PRESENT-DAY, REIGNING MONARCH,
I.E., CONVOKING THE "CORTES", ADMINISTRATION OF JUSTICE
IN HIS NAME, PARDON RECEIVING FOREIGN AMBASSADORS, AND
BESTOWING HONORS. HOWEVER, THE SUPREME COMMAND OF THE
ARMED FORCES AND THE OPTION -- WHICH THE PRINCE HAS
ALREADY EXERCISED ON THREE OCCASIONS -- TO PRESIDE OVER
MEETINGS OF THE NATIONAL DEFENSE COUNCIL , TO SUBMIT LAWS
TO POPULAR REFERENDUM, AND THE POWER TO CONVOKE AND PRESIDE
AT CABINET MEETINGS GIVE HIM EXPLICIT INFLUENCE IN
NATIONAL AFFAIRS. HIS POWER OF APPOINTMENT OF HIGH
GOVT OFFICIALS, E.G., PREMIER, PRESIDENT OF THE
"CORTES", ETC., IS CIRCUMSCRIBED BY THE REQUIREMENT THAT
HE CHOOSE FROM AMONG A PANEL OF THREE CANDIDATES SUBMITTED
BY THE COUNCIL OF THE REALM. AS WE HAVE STATED EARLIER,
JUAN CARLOS WILL START OFF WITH A GOOD MEASURE OF POLITICAL
CLOUT IN HIS OWN RIGHT - THOUGH NOTHING NEAR THAT WIELDED
BY FRANCO - WHICH GIVES HIM THE OPPORTUNITY, BUT NOT THE
CERTAINTY, THAT HE CAN GUIDE SPAIN INTO A MORE OPEN,
PLURALISTIC WAY OF LIFE. IN THE LONG RUN, THAT EVEOLUTION
WOULD MAKE HIM INTO A REIGNING MONARCH, ABOVE THE POLITICAL
ARENA AND A SYMBOL OF NATIONAL UNITY.
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